



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



Donald McMullin
441 Crew Road
Wakefield, NH 03872

ADMINISTRATIVE ORDER
No. WMD 03-28

October 21, 2003

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Donald McMullin pursuant to RSA 147-A:14 and RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Donald McMullin is an individual having a mailing address of 441 Crew Road, Wakefield, NH 03872.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100 – 1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
3. Donald McMullin is the owner of land at 441 Crew Road, Wakefield, NH, more particularly described in a deed recorded in the Carroll County Registry of Deeds at Book 1708, Page 146, and identified on the Wakefield Tax Map 74 as Lot 48 ("the Site").
4. On May 30, 2003, DES received a complaint alleging that mismanagement of used oil and hydraulic fluid had occurred at the Site.
5. On June 27, 2003, DES personnel investigated the complaint by conducting an Inspection of the Site ("Inspection"). The purpose of the Inspection was to determine Donald McMullin's compliance status relative to RSA 147-A, RSA 149-M, the Hazardous Waste Rules, and the Solid Waste Rules.
6. During the Inspection, DES personnel observed one unlabeled and open 55-gallon drum containing used oil and one unlabeled and open 5-gallon pail in a shed, as well as an area of petroleum contaminated soil in front of the shed.

7. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste (hazardous waste) with the hazardous waste number of NH01.
8. RSA 147-A: 2, VI defines “[hazardous waste] generator” as “any person who owns or operates a facility where hazardous waste is generated.”
9. Donald McMullin is a generator of hazardous waste as defined by RSA 147-A:2, VI.
10. Env-Wm 807.06(b)(4) requires used oil generators to clearly label all containers of used oil destined for recycle with the words “Used Oil for Recycle” at all times during accumulation and storage.
11. The container identified in paragraph C.6 was not labeled.
12. Env-Wm 807.06(b)(5) requires used oil generators to ensure containers used to store used oil for recycle are sealed at all times unless actively adding waste to or removing waste from the container.
13. The container identified in paragraph C.6 was not closed and sealed.
14. Env-Wm 807.06(b)(6) requires used oil generators to manage containers of used oil in such a manner as to prevent spillage, seepage, or other discharge of used oil into storm or sanitary sewers, onto the land, or into ground or surface waters.
15. Donald McMullin did not prevent spillage of used oil.
16. Env-Wm 513.02(a) requires that hazardous waste generators “...shall be responsible for the cleanup of any hazardous waste discharge or any discharge of a material which, when discharged, becomes a hazardous waste.”
17. The stained soil identified in paragraph C.6 represents a discharge of hazardous waste that requires the generator to clean up the discharge.
18. Env-Wm 807.06(b)(11) requires used oil generators to deliver used oil to an authorized facility.
19. During the Inspection, Mr. McMullin informed DES personnel that used oil is used in his wood stove in the winter to start the un-split logs. Mr. McMullin stated he pours approximately one cup of used oil onto the wood and then lights it.
20. As a result of the Inspection, DES issued a Report of Initial Complaint Investigation (“RICI”) dated June 27, 2003, to Donald McMullin advising him to label and seal used oil containers, as well as containerize petroleum contaminated soil. Mr. McMullin informed DES personnel that he would take care of it over the coming weekend.

21. On September 10, 2003, DES personnel conducted a follow-up inspection of the Site. DES personnel observed little or no change to the Site since the inspection conducted on June 27, 2003.

22. During the September 10, 2003 inspection, DES personnel observed approximately eight scrap tires in the woods near the box trailers.

23. Env-Wm 2605.02(b) requires tires that are stored outdoors to be stored in one of the following manners:

- a. In covered trailers;
- b. In transfer containers; or
- c. In stockpiles as follows:
 - (1) The diameter of the piles shall not exceed 25 feet;
 - (2) The height of the piles shall not exceed 15 feet;
 - (3) Fire lanes no less than 25 feet in width shall be maintained around each pile;
 - (4) Each pile shall have a berm with a minimum height of 12 inches constructed around its perimeter capable of containing any pyrolytic oils or other liquids generated by fire; and
 - (5) The stockpiling facility shall have equipment, cover material and other supplies, including water, sufficient to control a fire until the nearest fire company capable of extinguishing the fire arrives.

24. The tires observed during the September 10, 2003 inspection at the Site were not stored in accordance with Env-Wm 2605.02(b).

D. DETERMINATION OF VIOLATIONS

1. Donald McMullin has violated 513.02(a) by failing to remediate a discharge of hazardous waste.

2. Donald McMullin has violated Env-Wm 807.06(b)(4) by failing to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle."

3. Donald McMullin has violated Env-Wm 807.06(b)(5) by failing to seal all containers of used oil destined for recycle.

4. Donald McMullin has violated Env-Wm 807.06(b)(6) by failing to prevent discharges of used oil to the soil.

5. Donald McMullin has violated Env-Wm 807.06(b)(11) by failing to deliver used oil to an authorized facility.

6. Donald McMullin has violated Env-Wm 2605.02(b) by failing to comply with tire storage standards.

E. ORDER

Based on the above findings, DES hereby orders Donald McMullin as follows:

1. **Within 10 days** the date of this Order, store tires in accordance with Env-Wm 2605.02(b) of the New Hampshire Solid Waste Rules, until such time as the tires can be removed to a permitted solid waste facility. A copy of this regulation is enclosed for reference.
2. **Immediately** ensure that all containers of used oil destined for recycle are properly labeled with the words "Used Oil for Recycle" as specified by Env-Wm 807.06(b)(4).
3. **Immediately** ensure that all containers of used oil destined for recycle are properly sealed at all times, except when used oil is being added to or removed from the containers as specified by Env-Wm 807.06(b)(5).
4. **Immediately** cease burning used oil in a residential wood stove.
5. **Within 30 days** the date of this Order, dispose or recycle used oil at a facility or facilities authorized to accept use oil.
6. **Within 30 days**, containerize all oil contaminated soil and dispose of the contaminated soil at a facility permitted to accept it.
7. Submit one written status report to DES **within 45 days**, certifying that corrective measures have been implemented and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed, and **copies of disposal receipts.**
8. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Michael Galuszka, Waste Management Specialist
DES Waste Management Division
80 Glen Road
Gorham, NH 03581
Fax: (603) 466-5148
e-mail: mgaluszka@des.state.nh.us

F. APPEAL


Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Donald McMullin of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 149-M or RSA 147-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Donald McMullin remains obligated to comply with all applicable requirements, in particular RSA 147-A and RSA 149-M. DES will continue to monitor's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Carroll County Registry of Deeds so as to run with the land.


Kenneth W. Marschner, Administrator
Waste Management Programs


Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7000 1670 0000 0584 3731

cc: DB/FILE/ORDER
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